

JUDGE JONES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PORT ROYAL MARINE CO. LTD.,

Plaintiff,

- against -

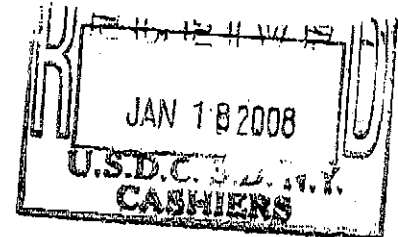
ASTON AGRO-INDUSTRIAL A.G.,

Defendant.

X
08 CV 0485

08 Civ.

ECF CASE



X
VERIFIED COMPLAINT

Plaintiff, PORT ROYAL MARINE CO. LTD ("Plaintiff"), by and through its attorneys, Lennon, Murphy & Lennon, LLC, as and for its Verified Complaint against the Defendant, ASTON AGRO-INDUSTRIAL A.G., (hereinafter referred to as "Defendant") alleges, upon information and belief, as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 United States Code § 1333. Jurisdiction over this matter is also present pursuant to the Federal Arbitration Act, 9 United States Code § 1 *et seq.*, and this Court's federal question jurisdiction, 28 United States Code § 1331.
2. At all times material to this action, Plaintiff was, and still is, a foreign corporation, or other business entity organized and existing under foreign law with a principal place of business in Cyprus.
3. Upon information and belief, Defendant was, and still is, a foreign corporation, or other business entity organized and existing under foreign law with a principal place of business in Switzerland.

4. By a charter party entered into on August 31, 2007 on the SYNACOMEX 90 charter party form, Plaintiff chartered to Defendant the M/V MILENA STAR for a carriage of a bulk wheat cargo from Novorossisk, Russia to Alexandria, Egypt. *See charter party attached as Exhibit 1.*

5. In the performance of the aforesaid voyage, there accrued charges for freight in the amount of \$750,825.00 and demurrage, *i.e.*, liquidated damages for delays at the loading and discharge ports, in the amount of 504,416.67 for the Vessel. While Defendant effected partial payment to Plaintiff, in breach of the charter party Defendant failed to pay the balance owing to Plaintiff despite due demand.

6. Specifically, pursuant to the Freight Invoice dated November 27, 2007, Defendant has illegally withheld payment of \$523,042.30. *See Freight Invoice attached as Exhibit 2.*

7. Pursuant to the charter party, all disputes were to be submitted to arbitration in London with English Law to apply. Plaintiff is preparing to commence arbitration against Defendant in London.

8. Interest, costs and attorneys' fees are routinely awarded to the prevailing party under English Law. As best as can now be estimated, Plaintiff expects to recover the following amounts in the London arbitration:

A.	Principal claim:	\$523,042.30;
B.	Interest on principal claim at 7% compounded quarterly for two years:	\$77,871.47
C.	Attorneys' fees and costs of arbitration:	\$209,216.00
Total:		\$810,129.77.

9. The Defendant cannot be found within this District within the meaning of

Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendant has, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of one or more garnishees which are believed to be due and owing to the Defendant.

10. The Plaintiff seeks an order from this court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, and also pursuant to the United States Arbitration Act, 9 U.S.C. §§ 1 and 8, attaching, *inter alia*, any assets of the Defendant held by the aforesaid garnishee for the purpose of obtaining personal jurisdiction over the Defendant, and to secure the Plaintiff's claims as described above.

WHEREFORE, Plaintiff prays:

A. That process in due form of law issue against the Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Verified Complaint;

B. That the Court retain jurisdiction to compel the Defendant to arbitrate in accordance with the United States Arbitration Act, 9 U.S.C. § 1 *et seq.*;

C. That since the Defendant cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, also pursuant to the United States Arbitration Act, 9 U.S.C. §§ 1 and 8, attaching all goods, chattels, credits, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds held by any garnishee within the District which are due and owing to the Defendant,

in the amount of \$810,129.77 calculated to date to secure the Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

D. That this Court recognize and confirm any arbitration award(s) or judgment(s) rendered on the claims set forth herein as a Judgment of this Court

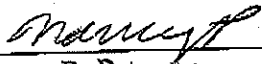
E. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;

F. That this Court award Plaintiff its attorney's fees and costs of this action; and

G. That the Plaintiff have such other, further and different relief as the Court may deem just and proper.

Dated: January 18, 2008
New York, NY

The Plaintiff,
PORT ROYAL MARINE CO. LTD.,

By: 
Nancy R. Peterson
Charles E. Murphy
LENNON, MURPHY & LENNON, LLC
The GrayBar Building
420 Lexington Ave., Suite 300
New York, NY 10170
(212) 490-6050 - phone
(212) 490-6070 - fax
nrs@lenmur.com
cem@lenmur.com

ATTORNEY'S VERIFICATION

State of New York)
) ss.: New York City
County of New York)

1. My name is Nancy R. Peterson

2. I am over 18 years of age, of sound mind, capable of making this

Verification, and fully competent to testify to all matters stated herein.

3. I am an attorney in the firm of Lennon, Murphy & Lennon, LLC, attorneys for the
Plaintiff.

4. I have read the foregoing Verified Complaint and know the contents
thereof and believe the same to be true and accurate to the best of my knowledge, information
and belief.

5. The reason why this Verification is being made by the deponent and not
by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now
within this District.

6. The source of my knowledge and the grounds for my belief are the
statements made, and the documents and information received from, the Plaintiff and agents
and/or representatives of the Plaintiff.

7. I am authorized to make this Verification on behalf of the Plaintiff.

Dated: January 18, 2008
 New York, NY


Nancy R. Peterson

Exhibit 1

CONTINENT GRAIN CHARTER PARTY

adopted PARIS 1957 – amended 1960 – amended 1974 – amended 1993
 by SYNDICAT NATIONAL DU COMMERCE EXTERIEUR DES CEREALES
 amended 1990, 1974 and 1993 in agreement with the COMITE CENTRAL DES ARMEATEURS DE FRANCE
 in cooperation with the French Chamber of Commerce and Industry
 adopted by the INTERNATIONAL COUNCIL OF THE BALTIMORE INTERNATIONAL MARITIME COUNCIL

Code name: **SYNAGOMEX 90**
 Copyright >>>SYNAGOMEX<<< and >>>COMITE DES ARMEATEURS DE FRANCE<<<
 ASTON SYNAGOMEX 2004
 Bredaards, 31st August, 1997

ASTON AGRO-INDUSTRIAL AG

Charter: 14

CH-6301 ZUG

Owners	ASTON AGRO-INDUSTRIAL AG	1
Vessel	Port Royal Marine Co. Ltd, Cyprus	2
Charterers	1. It is this day agreed between	3
Loading port(s)	Owners of the M/V "MILENA STAR" (see also attached rider clause no. 41-43)	4
	Carrying about	5
	now discharging in Libya, ETA Kerkir 17 th September, 2007	6
	and ASTON AGRO-INDUSTRIAL AG, Zug or nominee to be guaranteed by ASTON	7
	2. That the said vessel being light, staunch and in every way fit for the voyage, shall with all convenient speed proceed to	8
	vessel to be free of disbursement's account, Owners paying agency fee only	9
	which in case of named port(s) Owners acknowledge as safe and suitable for this vessel and therefor	10
Cargo	In such safe berth, dock wharf or anchorage as Charterers or their Agents or Shippers may direct a full and complete cargo of wheat and/or maize and/or soyabean	11
	of 21,000 metric tons in bulk, stowing abt 47 cbt without guarantee (5% more or less in Owners' option). (Estimated intake about 21,200 mt/tons)	12
	Shippers have the option of using a second safe berth/anchorage. The time for sailing between the two berths/anchorage shall be as follows:	13
	for Vessel's account: Warping alongside berth, if required by Shippers, to be always at Owners' risk and expense, but such time used to count as laytime.	14
	Owners shall provide and insist at their risk and expense and on their time all that is required for safe stowage of grain according to local and international regulations	15
	The cargo shall not exceed what the vessel can reasonably stow and carry over and above her bunkers, apparel, stores, provisions and accommodation. The whole cargo	16
	shall be carried and stowed under deck. All cargo on board to be delivered	17
	Furthermore, if seawage bags have been specifically agreed, the following shall apply:	18
	Charterers shall supply for seawage purposes a quantity of bagged cargo not exceeding _____ per cent which shall be stowed at their risk and expense. The seawage	19
	bagge signed for on Bill of Lading to be binding on vessel and Owners, unless error or fraud be proved.	20
Discharging port(s)	3. Baling so loaded, the vessel shall proceed with all convenient speed direct to 1 safe port 1-2 safe berth(s) Egypt (Mediterranean)	21
	which in case of named port(s) Owners acknowledge as safe and suitable for this vessel, and there discharging the cargo always afloat / to always effect or safety agreement	22
	In such safe berth, dock, wharf or anchorage as Charterers or their Agents or receivers may direct. Receivers have the option of using a second safe berth/anchorage. The time	23
	for sailing between the two berths/anchorage shall count as laytime, and sailing expenses shall be for Vessels' account. Warping alongside berth, if required by Receivers,	24
	always to be at Owners' risk and expense but such time used to count as laytime.	25
Freight	4. The freight agreed under this Charterparty shall be	26
	US\$ 34.00	27
	per ton of 1,000 kilos on intake quantity net Bill of Lading weight, which to be determined by draft survey, less 0.50 per cent and shall be deemed earned as per C/P on	28
	completion of loading, as cargo is loaded on board, prepaid demurrage and cost of unloading vessel and/or cargo less cost of unloading. The freight shall be paid as follows:	29
	85% of freight within 3 banking days of signing/releasing Bills of Lading marked "FREIGHT PAYABLE AS PER C/P" directly to Owners' nominated bank account.	30
	Balance plus demurrage or less despatch money, if any, upon sight and free delivery of this cargo and receipt of Owners' final account accompanied by appropriate	31
	laytime calculations supported by relevant documents including Statement of Facts/Notes of Readiness with all supporting documents even by fax but latest within	32
	3 weeks.	33
Loading and discharging	Any charges and dues under or taxes levied on the cargo/freight shall be for Charterers' account and those levied on the vessel for Owners' account.	34
	5. Cargo shall be loaded always to ex spot and/or grab trimmed and/or stowed at the expense and risk of Shippers/Charterers at the average rate of 5,000 mt/tons	35
	per weather working day of 24 consecutive hours.	36
	Cargo shall be discharged at the expense and risk of Receivers/Charterers at the average rate of 5,000 mt/tons per weather working day of 24 consecutive hours.	37
	Storage shall be under Master's direction and responsibility. Stowage/damage, if any, to be settled directly between Owners and Stowage/damage, but Charterers will	38
	assist Owners in every respect to settle same. Shippers' and/or Charterers' representatives/Surveyors have the right to stay on board the vessel during entire loading,	39
	discharging or lightering for the purpose of inspecting the cargo and/or weighing. Charterers and Owners are allowed to work overtime, such expenses shall be for account of the	40
	party incurring same. If ordered by the Port Authorities, overtime shall be for Charterers/Shippers/Receivers' account respectively. Overtime services rendered by ship's crew	41
	shall be in all cases for Owners' account.	42
		43

- ## THE CHAPTERS:

THE OWNERS:

RIDER TO C/P M/V "MILENA STAR", DATED BUXTEHUDE: 31st AUGUST, 2007 - KERCH/EGYPT (MED)Clause 40:

Should the dispute between Owners and Charterers not exceed the sum of US\$ 50,000.00 excluding cost and interest, both parties should refer the matter in dispute to the sole arbitrator in accordance with the LMAA Claims Procedure (1994).

Clause 41:

Vessel's description:

mv "MILENA STAR"
bc, cyprus flag, blt 1995
dwat 22058 on 9,11m ssw
grt/nrt 13695/7737, loa/beam 157,6/25,00 m
grain/bale 1033098/999364 cuft
hoth 4/4, gear: cranes 4 x 30
speed/cons: abt 13 knots on abt 1/3 cst 18,00 mt + mdo 1,5 mt
idle/ww mdo 1,2/3,5 mt plus mdo maneuvering in/out ports, canal, divers etc.
(all details 'about')

Clause 42:

Upon Charterers' request Owners have submitted following additional information:

- a. vsl's draft basis intaken quantity max 9,70 m mean draft 9,11 m
- b. distance water level/top of hatch booming in ballasted condition (still to be advised)
- c. owners confirm vessel to be iam certified or classed as bulk carrier
- d. owners confirm vessel to be equipped with valid certificates as per Solas regulations
- e. Owners: Port Royal Marine Co. Ltd., Cyprus
Managers: Starmarine Management inc, Glyfada Greece
- f. htm value US\$ 28,00 million
- g. pandt: The Swedish

Clause 43:

Owners have replied to Charterers questionnaire as follows:

- 01) legal name/address/tlx no/mic of:
 - a) original owners and/or managers STARMARINE MANAGEMENT INC.
TEL: +30210898066 FAX: +302108980392 - EMAIL: STARMARINE@HOL.GR
 - b) disponent owners or t/o owners (if applicable) PORT ROYAL MARINE CO. LTD CYPRUS
 - c) ash tone/fax numbers of ows mic CAPT VIGLAS AGGELOS, +302109652402
- 02) name of vsl (pls adv ex names/ex owners and since when EX YASMIN O / EX BEAUMONT under present ownership/management)
- 03) port of registry - official registry number LIMASSOL
- 04) flag + nationality/number of crew - confirm full iff/similar CYPRUS / 21 PHILIPPINO, GRK 2, YUG 1 / P3KW6 / cover/call sign / grt+nrt GRT 13.695 / NRT 7.737
- 05) year/month built + class pls confirm vsl is classed highest 4/1995
lloyds or equivalent - if equivalent pls adv which
- 06) confirm engine/bridge aft OK
- 07) loa + beam + depth moulded 157.60 / 25.00 / 12.70
- 08) draft fully laden on ssw/winter + corresponding tpi/c's Draft SSW: 9.11 m / TPC 32.8MT FL
dw summer + winter
- 09) grain/bale cap: total and holdwise distribution (mainholds only)
- 10) no. of hatches, dims and type of hatch covers (if tween info to be given for weather- and tween deck separately - also ofm tween deck bleeding in all holds):
NO OF HO/HA 4/4 - HYDRAYLIC MCGREGOR FOLDING TYPE
Hatch Dims: No1 11.69/17.52 x 20
No2-5 17.52x20.80 in mtrs
- 11) no. of holds 4
 - a) are the holds hoppers: YES
 - b) confirm no obstacles/obstructions/pillars in holds/on tanktop: CONFIRM OK
 - c) confirm tanktop is steel, strengthened and suitable for grab discharge: OK
 - d) adv if vsl is fully cargo battens fitted: NIL

RIDER TO C/P M/V "MILENA STAR", DATED BUXTEHUDE, 31st AUGUST, 2007 - KERCH/EGYPT (MED)

- 12) gear: type + capacity, outreach from ships rail, grab fitted?
 CARGO GEAR : 4x30T CRANES MITSUBISHI ALL FORE
 place/date of last quadrennial cargo gear survey
 OUTREACH 7M / GRAB FITTED NO
 re derricks: pls advise set-up (u/p or selfswinging)
- 13) owners'/disp owners': p+i club SWEDISH
 : h+m insurers ITALIAN MARKET AND OTHER MARKETS THROUGH CAMBIASSO RISSO
 : h+m value US\$ 28,000,000
 owners p+i club incl full add/validity date of cover hull+mach
 insured value incl insurers full style/add. OK
 name + address of owning company + managers incl tlx/fax/phone
 if disp owners are to/owners pls state date of del and period
 owners bankers / ref m/c + account no.
 confirmation from p+i club and hull and machinery insurers tht
 vessel is fully covered by owners/diponent owners for intended
 voyage and until when premiums paid to:
- 14) last special survey 5/05
 last drydocked + bottom painted place + date N/K
 last hold painting/last sandblasting of holds N/K
- 15) validity periods of foll certificates:
 a) safety certificate (both equipment+construction) 4/10
 b) classification and val's class/society 4/10
 c) international certificate 4/10
- 16) masters name: masters nationality: master employed since: CAPT CASTELLANO RESTITUTO , AUG07
- 17) vessel's telex/satcom no: REVERTING
- 18) distance w/ohc in ballasted condition ABT 11.0M
- 19) hold ladders fitted - type and dims AUSSIE LADDERS
- 20) service speed ABT 12.6
- 21) aircraft in ballast condition
- 22) last 3 cargoes carried (starting with last) and name of chrs incl tel nbr/name of m/c and name/full style agents at
 vel's last port of call.
 GRAIN-CARGILL / GRAIN/ COPPER BILLETS

*

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Addendum No. 1 to Charter Party
MV "Milena Star" dated August 31, 2007

It has this day been mutually agreed between Owners and Charterers:

That the loading port has been changed from Kerch to Novorossisk.

The Owners to be free of disbursements.

The loading rate is 6,000ts shax Friday 05.00 pm/Monday 08.00 even if used.

Charterers to pay US\$ 1.50 per tonne extra on entire quantity.

Notice of readiness is understood to have been given on the 17th September 12.00hours.

All other terms and conditions of the CP dated 31st August 2007 to remain unchanged.

Buxtehude September 14, 2007

The Owners:

The Charterers:

Exhibit 2

PORT ROYAL MARINE COMPANY LIMITED

Messrs

Aston. Agro - Industrial AG

c/o Vega star Maritime SA, Piraeus

Athens 27 November 2007

FREIGHT INVOICE

MV MILENA STAR / Bulk Wheat / Novorosisk - Egypt Med	
Freight 100 pct on 21,150 mt at US\$ 35.50 pmt	\$750,825.00
Plus demurrage load port	\$214,152.78
Plus demurrage disch port	
	\$290,263.89
Total	\$1,255,241.67
Less Address comm. 2.50 pct	\$31,381.04 -
Less Brok. Niko chart comm. 1.25 pct	\$15,690.52 -
Less advanced freight	
	\$685,127.81 -
Balance due to Owners	\$523,042.30

Transfer to :

H.S.B.C Bank plc

Piraeus Branch. Greece

Swift code : MIDLGRAA

A/C nr : 001-078641-036

f/o : Port Royal Marine Company Limited

Ref : MV Milena Star